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In re Application of BRUER et al :
U.S. Application No.: 10/575,018 :
PCT Application No.: PCT/EP04/11061 :
Int. Filing Date: 04 October 2004 : DECISION
Priority Date Claimed: 06 October 2003 :
Attorney Docket No.: 2584SG-3 :
For: INSULATING ELEMENT FROM MINERAL :
FIBERS FOR SHIPBUILDING :

This is in response to applicant's "Renewed Petition under 37 C.F.R. 1.10(d)" filed 31 October 2006 and "Supplemental Petition to Revive Unintentionally Abandoned Application Pursuant to 37 C.F.R. § 1.137(b)" filed 13 June 2007.

BACKGROUND

On 04 October 2004, applicant filed international application PCT/EP04/11061, which claimed priority of an earlier European Patent Office application filed 06 October 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 21 April 2005. The thirty-month period for paying the basic national fee in the United States expired on 06 April 2006.

On 06 April 2006, applicant purportedly filed national stage papers in the United States Designated/Elected Office (DO/EO/US) via the Express Mail Post Office to Addressee Service of the USPS ("Express Mail"). The submission was accorded a receipt date of 07 April 2006.

On 08 June 2006, applicant filed a petition under 37 CFR 1.10(d).

On 21 July 2006, this Office mailed a decision dismissing the 08 June 2006 petition.

On 11 August 2006, applicant filed a renewed petition under 37 CFR 1.10(d).

On 27 September 2006, this Office mailed a decision dismissing the 11 August 2006 renewed petition.

On 31 October 2006, applicant filed a renewed petition under 37 CFR 1.10(d).

On 13 June 2007, applicant filed a petition under 37 CFR 1.137(b).

DISCUSSION

I. Renewed Petition Under 37 CFR 1.10(d)

37 CFR 1.10(d) states,

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Petitioner has previously satisfied items (1) and (2) above.

With regard to item (3) above, the petition does not sufficiently establish that the national stage papers were deposited in Express Mail prior to the last scheduled pickup on 06 April 2006. The original and first supplemental affidavits of Eddie Abeyta constitute an adequate showing that the correspondence was deposited in Express Mail prior to the last scheduled pickup on 06 April 2006. However, sufficient corroborating evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in Express Mail has not been provided. The present renewed petition refers to a letter sent to Grosse Bockhorni & Schumacher ("GBS") which states that U.S. application papers had been filed on 06 April 2006. The supporting declaration of Susan Willson mentioned in the petition is not present. In any event, Ms. Willson is not the person who deposited the correspondence in Express Mail, and her letter sent to GBS is not equivalent to a log book entry which contains information such as the Express Mail number, the place, date and time of deposit, the time of the last scheduled pick-up for that date and place of deposit, the depositor's initials or signature, and the date and time of entry in the log." See MPEP 513. The petition further states that several other Express Mail letters that were deposited on 06 April 2006 were received by

the USPTO on the same day as the present application. It is noted that the second supplemental declaration of Eddie Abeyta mentioned in the petition is not present. In any case, the fact that letters arrive at the destination on the same date does not establish that the letters had the same date of deposit. For example, a letter deposited at 11:59 p.m. one evening and a letter deposited at 12:01 a.m. the next morning may very well arrive on the same day since they were deposited only minutes apart. Moreover, the presented evidence does not discount the possibility that the Express Mail letters purportedly deposited at the same time as the correspondence in question were the ones that were assigned an incorrect deposit date. The petition questions the deposit date assignment procedures of the USPS but does not provide any evidence from the USPS that supports the theory that the USPS might have erred.

II. Petition Under 37 CFR 1.137(b)

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), the petition states, "The entire delay in entering the U.S. national phase was unintentional." This statement is interpreted as a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons set forth in §I above, the renewed petition under 37 CFR 1.10(d) is DISMISSED without prejudice.

For the reasons set forth in §II above, the petition under 37 CFR 1.137(b) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 04 October 2004, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 04 May 2007.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

A handwritten signature in black ink, appearing to read "Bryan Tung".

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